

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CITY OF SAGINAW,

Plaintiff/Counter-Defendant-  
Appellee,

v

POLICE OFFICERS ASSOCIATION OF  
MICHIGAN and ROBERT DAVY,

Defendants/Counter-Plaintiffs-  
Appellants.

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UNPUBLISHED

January 17, 2003

No. 236527

Saginaw Circuit Court

LC No. 00-032219-CL

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Defendants Police Officers Association of Michigan (hereinafter “POAM”) and Robert Davy appeal as of right the circuit court’s order granting plaintiff’s motion for summary disposition and vacating an arbitration award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and POAM were parties to a collective bargaining agreement (“CBA”). Article XX provided that employees in the bargaining unit would receive the benefits of the Saginaw Police-Fire Retirement System as described in the city charter and ordinance, and that the ordinance would control in the event that questions arose regarding the interpretation of the CBA. Article XV provided for a grievance procedure, the final step of which was arbitration. An arbitrator would have no power to modify the terms of the CBA.

Robert Davy, a member of POAM, was injured in the line of duty and took a disability retirement. When Davy reached age fifty-five, his pension was recomputed. Approximately 500 hours of vacation time and 480 hours of compensatory time were not included in his final average compensation. Davy appealed to the Pension Board of Trustees, the body entrusted by the ordinance with the administration and management of the retirement system. The pension board denied the appeal.

Defendants’ grievance was denied at each step of the procedure, and the matter proceeded to arbitration. Plaintiff asserted that the matter was not subject to arbitration because the CBA provided that pension issues were controlled by the ordinance. The arbitrator ruled in favor of Davy. In so ruling, the arbitrator relied on a 1979 arbitration decision in which a similar

issue regarding the inclusion of vacation and compensatory time in the computation of final compensation had been decided in favor of a firefighter. In that decision the CBA incorporated by reference the retirement provisions of the city charter and ordinance, and did not provide that the ordinance was controlling in the event that questions arose regarding interpretation of the CBA. Here, the arbitrator concluded that the issue was subject to arbitration, and that the pension board should have followed the 1979 decision.

Plaintiff filed a petition in circuit court to vacate the arbitration award, and defendants filed a counter complaint seeking to enforce the award. Thereafter, the parties filed competing motions for summary disposition. The circuit court granted plaintiff's motion for summary disposition and vacated the arbitration award. The circuit court found that the 1979 arbitration decision was distinguishable because the CBA at issue in that case incorporated by reference the pension provisions of the ordinance. The court reasoned that that incorporation supported a finding in that case that an appeal to the pension board was not the exclusive avenue for resolving pension disputes. However, the court concluded that because no such incorporation was provided for in the CBA at issue in this case, the language in Article XX mandated a conclusion that the issue of the inclusion of vacation and compensatory time in the recalculation of Davy's final average compensation was not subject to arbitration.

We review a circuit court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). However, when considering the enforcement of an arbitration award, this Court's review is circumscribed. Labor arbitration is a product of contract. An arbitrator's authority to resolve a dispute arising out of the interpretation of a CBA is derived exclusively from the contract. Judicial review of an arbitrator's decision is limited. A court cannot review factual findings or the merits of the decision. A court may only decide whether the arbitrator's decision draws its essence from the contract. If the arbitrator did not disregard the scope of his authority as expressed in the contract, judicial review ceases. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118-119; 607 NW2d 742 (1999).

Defendants argue that the circuit court erred by vacating the arbitration award. We disagree and affirm the circuit court's decision. An arbitrator's authority to resolve a dispute regarding the interpretation of a CBA is derived exclusively from the terms of the CBA. *Id.* at 118. The CBA at issue in this case contained a grievance procedure that culminated in arbitration; however, Article XX of the CBA clearly stated that plaintiff's retirement system ordinance was controlling in the event that a dispute arose regarding the interpretation of the CBA. The retirement system ordinance contained no provision for arbitration of disputes regarding an eligible employee's entitlement to pension benefits. Rather, the ordinance provided that the pension board had the authority to administer and manage the system and to construe the provisions of the ordinance.

Unlike the CBA at issue in the 1979 arbitration decision, the CBA at issue here did not incorporate by reference the retirement system ordinance. The lack of an incorporation by reference eliminated the option of arbitrating a pension dispute. Cf. *Clinton Twp v Contrera*, 92 Mich App 297, 304; 284 NW2d 787 (1979). The arbitrator's task was to determine whether the dispute regarding the computation of Davy's final average compensation for purposes of computing his pension was subject to arbitration, or whether resolution of the dispute was within the purview of the pension board, as provided in the CBA and the ordinance. *Lenawee Co*

*Sheriff, supra.* The arbitrator exceeded his authority as expressed in the CBA, and his decision did not draw its essence from the CBA. The circuit court did not err by vacating the arbitrator's decision. *Id.* at 118-119.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot